

SENATE FINANCE, WAYS, AND MEANS COMMITTEE

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 2253*

House Bill No. 2637

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Chapter 5, is hereby amended by adding the following language as a new part:

(a) Authority to Sell Tax Certificates. Any municipality, except this act shall not apply to any county or to any county having a metropolitan form of government or to any city which has its delinquent property taxes collected by a county official or by a county back-tax attorney, may adopt a procedure to provide for the sale to private parties of tax receivables representing some or all delinquent real property taxes of the municipality. Said procedure shall be upon provisions deemed appropriate by the governing body of the municipality in consultation with the municipal officers involved in said procedure, subject to the provisions of this Act. Tax receivables may be sold in any lot or block form, negotiated or otherwise, as determined by the governing body. Before a municipality may use the procedure set out in the Act, a resolution authorizing the procedure must be approved by a two-thirds (2/3) vote of the governing body. The municipal collecting official shall request the municipal purchasing agent to utilize normal competitive bidding procedures for the sale of such tax certificates. Any municipality electing to issue tax certificates as provided in this part is referred to in this Act as an "Issuer". Nothing in this section shall reduce, change, affect, or otherwise prevent the right of any property owner or taxpayer to fully redeem his or her real property upon payment of all delinquent taxes, penalties, interest and costs due provided that said

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payment is made prior to the entering of a final judgment ruling by a court of competent jurisdiction.

(b) Sale of Tax Certificates. At any time after real property taxes become delinquent, an Issuer shall have the power to sell to private parties those tax receivables representing delinquent real property taxes. Delinquent receivables for taxes sold to the private sector shall be evidenced by tax certificates issued by the Issuer. A tax certificate vests in the certificate holder the first lien of the state and its taxing districts, superior to all other liens and encumbrances upon the parcel described in the tax certificate, in the amount of the certificate redemption price, except prior federal taxes, notice of which has been properly filed in the appropriate taxing jurisdiction. Such tax certificates shall be issued against individual tax parcels in an amount of not less than 100% of the total delinquent real property taxes assessed by the issuer attributable to the parcel plus all interest, fees, penalties, and costs assessed by law as of the date of issuance, all of which shall be plainly identified on the face of the tax certificate. Any tax certificate amount paid in excess of 100% of the delinquent taxes, interest, fees, penalties and costs shall not result in an additional liability to the property owner or taxpayer for this parcel of property. The municipal collecting official charged with making and maintaining the tax certificate record shall retain an amount not to exceed 2% of the excess of 100% of the delinquent taxes, interest, fees, penalties and costs as an administrative fee and the remainder of such excess shall be allocated to the municipality's general fund. The purchase of a tax certificate does not give the certificate holder any right to enter upon

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the property or in any manner disturb the owner of the parcel against which the tax certificate is issued. The tax certificate represents an intangible property right to receive all amounts due with respect to the delinquency in connection with the delinquent property tax roll and this section. No tax certificate shall be issued against a tax parcel until such time as the accrued delinquent real property taxes plus interest, fees, penalties and costs exceed the sum of \$100.00. The holders of tax certificates issued hereunder shall be entitled to receive interest on the amounts of the tax certificates, including any future advances under Section (j) of this Act and any amounts paid for enforcement of the tax lien under Section (k) of this Act, at the rate of one and one-half percent (1.5%) simple interest per month or any portion of a month from and after the date of payment of the amounts evidenced by the tax certificates until redemption. A tax certificate shall not be considered as having any situs in the county in which the real property is located for which the tax certificate is sold. The appropriate official of the issuer shall make and maintain the tax certificate record which shall be a list of all the tax certificates sold, showing the date of the sale, a description of the parcel, the name of the purchaser (or the successor), the purchase price, the amount of any payments received by the holder, and how those amounts were applied to the taxes, interest, fees, penalties and costs.

(c) Penalties and Interest on Tax Certificates. In lieu of the amounts specified by Tennessee Code Annotated, Section 67-5-2010, interest of one and one-half percent (1 1/2%) of the amount of the tax certificate, including any future advances under Section

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(j) of this Act and any amounts paid for enforcement of the tax lien under Section (k) of this Act, shall accrue against the tax parcel on the date of payment of any such amounts evidenced by the tax certificate and on the first day of each succeeding month thereafter until the date of redemption of the tax certificate; provided, however, when a tax certificate is redeemed and such interest and penalties imposed on the tax certificate total less than 5% of the face amount of the certificate, a mandatory minimum charge of 5% shall be levied on the face amount of the tax certificate, which amount shall be payable to the Holder upon redemption of the tax certificate.

(d) Notice Prior to Sale. As a preliminary step toward the sale of tax certificates, the officer charged with the collection of real property taxes for the Issuer shall compile a list of tax parcels for which tax certificates are to be sold. Thereupon, such officer shall cause to be inserted in one or more newspapers of the county once a week for two consecutive weeks, the second such publication being at least thirty (30) days prior to the sale of such tax certificates, a notice listing the names of all delinquent taxpayers, a brief legal description and the amount of each such taxpayer's delinquency on each tax parcel as to which tax certificates are to be sold by the Issuer, and further stating as follows:

You are hereby advised that after [a date which is not less than 30 days after the second publication of the notice] additional interest, fees, penalties, and costs will be imposed in consequence of the sale of tax certificates against the land herein

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described, and until the sale of such certificates, taxes and delinquent costs may be paid through my office.

_____ Tax Collection Officer

The costs of advertising shall be advanced by the Issuer and added to the costs attributable to the tax parcel. If no newspaper is published in the county, said notice shall be posted on the courthouse door.

(e) Notice After Sale. Such officer shall likewise prepare from the rolls held by the Issuer, a list of taxpayers against whose real property tax certificates have been sold and not redeemed as of June 1st of each calendar year. Such officer shall include the following notice or equivalent language in the current tax bills sent to the property owners appearing on such list:

IN ADDITION TO THIS AMOUNT, YOU OWE BACK TAXES. EVIDENCE OF SUCH BACK TAXES HAVE BEEN SOLD IN THE FORM OF A TAX CERTIFICATE PURSUANT TO SECTION (B) OF THIS ACT. FAILURE TO PAY SUCH BACK TAXES WILL RESULT IN ADDITIONAL PENALTIES, FEES, INTEREST, AND COSTS ASSESSED AGAINST YOUR PROPERTY. CONTACT THIS OFFICE IMMEDIATELY OR YOUR PROPERTY MAY BE SOLD.

(f) Partial Payments of Taxes. The Issuer shall remit to the holder of the tax certificate, when and as received, all amounts received by the Issuer in partial payment of taxes, interest, fees, penalties, and costs evidenced by the face amount of the tax certificate, plus interest on the portion of the face amount paid, at the rate of 1.5% per

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month from and including the month of issuance through the month of payment. Such partial payments shall be a credit as all tax payments to the balance of the amount owing and applied toward the oldest taxes or tax certificates with interest receiving initial credit until full redemption as herein provided.

(g) Redemption of Tax Certificates. Each tax certificate shall be redeemed by the Issuer thereof upon receipt, either through a tax sale or otherwise, of all of the taxes, interest, fees, penalties, and costs, provided by law and attributable to the tax receivable. Upon receipt of such redemption amount, the Issuer shall remit to the holder of any tax certificate an amount equal to the face amount of the tax certificate, including any future advances under Section (j) of this Act and any amounts paid for enforcement of the tax lien under Section (k) of this Act, plus either (i) interest at the rate of one and one-half percent (1.5%) per month from and after the date of issuance of each tax certificate until the date of redemption on such face amount of the tax certificate, or (ii) the mandatory minimum charge prescribed by Section (c) of this Act. Upon receipt of payment of the full amount due under a tax certificate, the holder thereof shall deliver the original of such tax certificate to the Issuer. Notwithstanding any other provision of this Act, the obligations of the Issuer evidenced by tax certificates shall not be general obligations of the Issuer. The holder of a tax certificate shall be entitled only to the benefit of the lien for the taxes represented by such tax certificate and to receive the sums due under this part when and as collected by the Issuer.

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(h) Subsequent Delinquencies. The holder of an outstanding tax certificate on any tax parcel shall have the first right to purchase additional tax certificates on said parcel for subsequent delinquencies on such parcel. Upon the occurrence of a subsequent delinquency, the Issuer thereof shall notify the holder of the most recently issued tax certificate of the delinquency and offer to sell a tax certificate representing such delinquency. The face amount of such tax certificates shall be calculated and notices shall be provided to the taxpayer as otherwise required by this Act. The holder of the tax certificate shall have a period not to exceed 60 days following notice from the Issuer to acquire such subsequent tax certificate. Upon the failure or refusal of such holder to acquire such subsequent tax certificate, the Issuer shall be free to sell the subsequent tax certificate to any other person, or otherwise proceed to effect collection of the delinquent tax as provided by law.

(i) Enforcement of Tax Lien. The Issuer shall be entitled to file an action to preserve the virtue of any tax lien at any time. If subsequent tax certificates on a tax parcel have not been purchased as provided in the preceding section, then the Issuer shall be free to proceed to collect all amounts due with respect to such tax parcel for all tax years as otherwise provided by law, notwithstanding the issuance of a tax certificate for such tax parcel for prior years. Nothing in this Section shall affect the enforcement of the tax lien for any tax parcel for which a tax certificate has not been issued. In no event shall the holder of any tax certificate take any direct action against the taxpayer for the collection of any amounts evidenced by a tax certificate. However, if the Issuer or its

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representative fails or refuses to pursue foreclosure when requested, the tax certificate holder may petition the court for a writ of mandamus against the Issuer to effect foreclosure of the lien.

(j) Future Advances. Upon the filing of any action to preserve the virtue of the tax lien as to a tax parcel for which a tax certificate has been issued, the holder of the tax certificate shall pay to the Issuer thereof a future advance in an amount equal to the penalties, fees, and costs imposed by Tennessee Code Annotated, Section 67-5-2410(a), including customary court costs, title search fees, and attorney's fees associated with suit for the enforcement of the lien. The face amount of such tax certificate shall thereupon be increased by the amount of such future advance and shall continue to bear interest as otherwise provided in this Act.

(k) Enforcement of Lien Evidenced by Tax Certificate(s). Any holder of a tax certificate for any given tax year may file an application for foreclosure of the tax lien with the officer charged with the collection of real property taxes for the Issuer. Such application shall require payment of (i) an amount equal to all delinquent real property taxes, penalties, fees, interest and future advances due on the parcel and not already represented by tax certificates, (ii) an amount sufficient to redeem all outstanding tax certificates issued against such parcel and held by persons other than the applicant, and (iii) the customary costs of the sale of the tax parcel as determined by the Issuer and not already represented by tax certificates. Upon payment of the specified amounts by the holder, the face amount of the applicant's tax certificate shall be increased by an amount

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equal to such payment and shall continue to bear interest as otherwise provided in this Act. Upon receipt of such application and payment, such officer shall thereupon redeem all outstanding tax certificates held by persons other than the applicant and proceed with suit for the enforcement of such tax lien as otherwise provided by law. The tax certificate holder applying for the tax sale shall be deemed to have entered the first bid at the tax sale of such tax parcel in the amount of the holder's tax certificate. In no event shall the State or an Issuer be required to enter a bid in a tax sale on any tax parcel for which a tax certificate is then outstanding. Any person, regardless of any prior or existing liens on, claim to, or interest in, the property, may bid at the tax sale. If at the tax sale there are no bids higher than the first bid entered on behalf of the tax certificate holder, then the tax parcel shall be sold to such tax certificate holder on the credit of the amount of such holder's tax certificate. If a party other than the certificate holder is the successful bidder, then the certificate holder shall be entitled to full redemption of the tax certificate.

(I) Tax Certificates Issued In Error. When it is determined that a tax certificate has been issued in error, a refund of all amounts paid for the tax certificate plus interest at the rate of 8% per annum from the date of issuance to the date of refund shall be made to the certificate holder. The following is a partial listing of tax certificates that would be considered to have been sold in error:

- (1) Taxes were paid or legally canceled.
- (2) Parcel is owned by governmental agency.
- (3) Parcel is then subject to a bankruptcy proceeding.

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- (4) Parcel is subject to a condemnation proceeding.
- (5) Parcel is subject to Sailors and Soldier Relief Act.
- (6) Parcel does not exist or legal description is in error.

For purposes of this section, the tax is not deemed paid or legally canceled by virtue of a sale of a tax certificate against the parcel. The holder of a tax certificate who received all or any part of the amount paid by the redemptioner shall not be obligated to make any refund or repayment of any amount to the redemptioner, the delinquent taxpayer, the issuer, or any other person.

(m) Transfer of Certificates. Any holder of a tax certificate issued hereunder may assign or pledge such certificate by endorsement at any time before the tax certificate is redeemed. The endorsement of a tax certificate by the holder thereof with the date and amount received shall be sufficient evidence of the assignment or pledge of the certificate. Upon presentation to the Issuer thereof of a properly endorsed certificate, the assignee shall be entitled to a reissued certificate in the name of the assignee. The Issuer shall be entitled to charge a service charge of \$2.00 for each such reissued certificate. Tax certificates issued under this Act shall be considered instruments as defined in Title 47, Chapter 9 of Tennessee Code Annotated.

(n) Lost or Destroyed Certificates. The holder of a tax certificate may apply to the Issuer for a duplicate certificate if the original certificate has been lost or destroyed. The holder shall furnish an affidavit to the Issuer stating that the affiant is the owner of a tax certificate, that the original tax certificate was lost or destroyed, and that the holder shall

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indemnify the Issuer and its agents for any loss or damage, including attorney's fee and costs, caused by the redemption of the lost or destroyed certificate. The Issuer shall be entitled to collect a fee of \$2.00 for issuance of the duplicate certificate. Upon payment the Issuer shall thereupon issue a duplicate tax certificate plainly marked or stamped as being a duplicate.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.